

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Document Number AMS-SC-18-0081, SC-19-326]

Removal of U.S. Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will remove seven voluntary U.S. grade standards and one consumer standard for fresh fruits and vegetables from the Code of Federal Regulations (CFR). This regulatory action is being taken as part of USDA's work to eliminate regulations that are outdated, unnecessary, ineffective, or impose costs that exceed benefits. None of the eight voluntary standards slated for removal from the CFR are related to a current, active marketing order, import regulation, or export act. The cost of printing these eight standards in the CFR annually exceeds the benefits of further inclusion in the CFR. These voluntary standards and all subsequent revisions or new standards for these products will be available in a separate publication. The standards for the affected commodities will continue to be administered by the AMS Specialty Crops Inspection (SCI) Division and catalogued using the existing numbering system for voluntary standards. Any proposed, new, or revised voluntary standards will appear in the **Federal Register** with the opportunity for public comment.

DATES: Effective [Insert date of publication in the **Federal Register**]. Comments must be received [insert date 60 days from the date of publication in the **Federal Register**].

ADDRESSES: Interested persons are invited to submit written comments to the USDA,

Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406; fax: (540) 361-1199; or at www.regulations.gov. Comments should reference the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the above office during regular business hours, and can be viewed as submitted, including any personal information you provide, on the www.regulations.gov website.

FOR FURTHER INFORMATION CONTACT: Lindsay H. Mitchell at the address above, or by phone (540) 361-1120; fax (540) 361-1199; or, email lindsay.mitchell@ams.usda.gov.

SUPPLEMENTARY INFORMATION: On February 24, 2017, President Trump signed Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda, which established a Federal policy to alleviate unnecessary regulatory burdens on the American people. Section 3(d) of the E.O. directs each Federal agency to establish a Regulatory Reform Task Force to identify regulations that: (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create serious inconsistencies or otherwise interfere with regulatory reform initiatives or policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision; or (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

This regulatory action is being taken as part of the Regulatory Reform Agenda to eliminate regulations that are outdated, unnecessary, ineffective, or impose costs that

exceed benefits.

Executive Orders 12866, 13771, and 13563

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments nor significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that

must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Analysis

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Although this action will remove provisions from the CFR, small entities should see no change as the standards will continue to be administered to ensure their continued convenient availability and public input to their formulation.

Background

The Secretary of Agriculture is authorized to provide Federal grading and certification services, and to develop and establish efficient marketing methods and practices of agricultural commodities with the goal of facilitating the efficient marketing of agricultural commodities and allowing consumers to obtain the quality of products they desire at a reasonable cost. 7 U.S.C. 1621-1627. For more than 100 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards that provide a uniform language that may be used to describe the characteristics of more than 450 commodities. These standards are widely used in private contracts, government procurement, marketing communication, and, for some commodities, consumer information.

Although use of most of the U.S. standards is voluntary, through the years, they have been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices, have outpaced the process of revising

and issuing regulations. As a result, in some instances, industry and the marketplace have been burdened with outdated trading language. The President's Regulatory Reform Agenda has provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers while reducing the regulatory burden. To meet this initiative, regulations that are currently in the CFR that could be administered under the authority of AMS are being removed from the CFR. This includes all official grade standards except those that currently are in the rulemaking process, incorporated by reference in marketing orders/agreements appearing in 7 CFR Parts 900 through 999, or used to implement government price supports. Those grade standards will continue to appear in the CFR although the text will also be available from AMS as are all other grade standards.

This rule eliminates selected standards that comprise approximately 30 pages of the CFR covering U.S. and consumer standards for fresh fruits and vegetables.

The following is an outline of standards being removed from the CFR, and those that will remain in the CFR and the reason they are not being removed.

7 Part 51	Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)
	Standards Being Removed From CFR
CFR Section	Title
51.475-494	Subpart—United States Standards for Grades of Cantaloups.
51.560-588	Subpart—United States Standards for Celery.
51.595-613	Subpart—United States Consumer Standards for Celery Stalks.
51.1000-1016	Subpart—United States Standards for Persian (Tahiti) Limes.
51.1210-1223	Subpart—United States Standards for Grades of Peaches.
51.2925-2934	Subpart—United States Standards for Grades of Apricots.
51.3145-3160	Subpart—United States Standards for Grades of Nectarines.
51.3740-3749	Subpart—United States Standards for Grades of Honey Dew and Honey Ball Type Melons.
	Regulations Being Retained in CFR Because They Provide Operational Regulations
CFR Section	Title

51.1-62	Subpart—Regulations.
CFR Section	Standards Being Retained in CFR Because They are Currently Referenced in Marketing Orders/Agreements, Import Regulations, or Export Acts
	Title
51.300-322	Subpart—United States Standards for Grades of Apples.
51.340-349	Subpart—United States Standards for Grades of Apples for Processing.
51.620-653	Subpart—United States Standards for Grades of Grapefruit (Texas and States Other Than Florida, California, and Arizona).
51.680-714	Subpart—United States Standards for Grades of Oranges (Texas and States Other Than Florida, California, and Arizona).
51.750-784	Subpart—United States Standards for Grades of Florida Grapefruit.
51.880-914	Subpart—U.S. Standards for Grades of Table Grapes (European or Vinifera Type).
51.1140-1179	Subpart—United States Standards for Grades of Florida Oranges and Tangelos.
51.1260-1280	Subpart—United States Standards for Summer and Fall Pears.
51.1300-1323	Subpart—United States Standards for Winter Pears.
51.1345-1359	Subpart—United States Standards for Pears for Canning.
51.1400-1416	Subpart—United States Standards for Grades of Pecans in the Shell.
51.1430-1451	Subpart—United States Standards for Grades of Shelled Pecans.
51.1520-1538	Subpart—United States Standards for Grades of Fresh Plums and Prunes.
51.1540-1566	Subpart—United States Standards for Grades of Potatoes.
51.1575-1587	Subpart—United States Consumer Standards for Potatoes.
51.1810-1837	Subpart—United States Standards for Grades of Florida Tangerines.
51.1855-1877	Subpart—United States Standards for Grades of Fresh Tomatoes.
51.1900-1913	Subpart—United States Consumer Standards for Fresh Tomatoes.
51.1995-2009	Subpart—United States Standards for Grades of Filberts in the Shell.
51.2075-2091	Subpart—United States Standards for Grades of Almonds in the Shell.
51.2105-2131	Subpart—United States Standards for Grades of Shelled Almonds.
51.2275-2296	Subpart—United States Standards for Shelled English Walnuts (Juglans Regia).
51.2335-2341	Subpart—United States Standards for Grades of Kiwifruit.
51.2540-2549	Subpart—United States Standards for Grades of Pistachio Nuts in the Shell.
51.2555-2562	Subpart—United States Standards for Grades of Shelled Pistachio Nuts.
51.2646-2660	Subpart—United States Standards for Grades for Sweet Cherries.
51.2830-2854	Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types).
51.2945-2966	Subpart—United States Standards for Grades of Walnuts in the Shell.
51.3050-3069	Subpart—United States Standards for Florida Avocados.
51.3195-3212	Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions.
51.3410-3418	Subpart—United States Standards for Grades of Potatoes for Processing.

CFR Section	Standards Being Retained in CFR Because They are Currently Referenced in Government Price Support Programs Title
51.1235-1242	Subpart—United States Standards for Grades of Cleaned Virginia Type Peanuts in the Shell.
51.2710-2721	Subpart—United States Standards for Grades of Shelled Runner Type Peanuts.
51.2730-2741	Subpart—United States Standards for Grades of Shelled Spanish Type Peanuts.
51.2750-2763	Subpart—United States Standards for Grades of Shelled Virginia Type Peanuts.

To ensure that standards will continue to be developed, issued, and revised in accordance with procedures that ensure a fair and open process, all new and proposed revisions to existing AMS standards will be published in the **Federal Register** as a “Notice” with a public comment period. A final version of each standard also will be published in the **Federal Register** as a notice and will continue to be made available by AMS.

In developing new or revising existing grade standards, the Administrator will consider three factors: (1) a new or revised standard must be needed to facilitate trade in a particular commodity; (2) there must be demonstrated interest and support from the affected industry or other interested parties for a voluntary standard; and, (3) the standard must be practical to use.

Initial requests for development or revision of a standard may come from the industry, trade or consumer groups, State departments of agriculture, the U.S. Department of Agriculture, or others. Once a request has been received, AMS coordinates procedures to gather information needed to move forward with the new or revised standard. After this process is completed, AMS publishes a notice of proposed standards in the **Federal Register** to solicit comments from interested parties (normally the comment period is 60

days). After evaluating the comments received from interested parties, AMS determines whether to proceed, develop a new proposal, or terminate the process.

The public is informed of the outcome of the process through a notice to trade and a notice in the **Federal Register**. In addition, the AMS program that handles the commodity will distribute copies of each standard, upon request, as a pamphlet or other means.

Pursuant to 5 U.S.C. 553, AMS has determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for making it effective immediately because: (1) the standards are voluntary; (2) no changes are being made to the standards by this rule; (3) this action is in accordance with the President's Regulatory Reform Agenda.

List of Subjects in 7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51 – [AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621 – 1627.

Subpart [Removed]

2. The subpart entitled “United States Standards for Grades of Cantaloups,” consisting of §§ 51.475 through 51.494c, is removed.

Subpart [Removed]

3. The subpart entitled “United States Standards for Celery” consisting of §§ 51.560 through 51.588, is removed.

Subpart [Removed]

4. The subpart entitled “United States Consumer Standards for Celery Stalks,” consisting of §§ 51.595 through 51.613, is removed.

Subpart [Removed]

5. The subpart entitled “United States Standards for Persian (Tahiti) Limes,” consisting of §§ 51.1000 through 51.1016, is removed.

Subpart [Removed]

6. The subpart entitled “United States Standards for Grades of Peaches,” consisting of §§ 51.1210 through 51.1223, is removed.

Subpart [Removed]

7. The subpart entitled “United States Standards for Grades of Apricots,” consisting of §§ 51.2925 through 51.2934, is removed.

Subpart [Removed]

8. The subpart entitled “United States Standards for Grades of Nectarines,” consisting of §§ 51.3145 through 51.3160, is removed.

Subpart [Removed]

9. The subpart entitled “United States Standards for Grades of Honey Dew and Honey Ball Type Melons,” consisting of §§ 51.3740 through 51.3749, is removed.

Dated: January 26, 2019

Bruce Summers
Administrator
Agricultural Marketing Service
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